

**THIS DECISION HAS BEEN APPEALED. THE  
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:**

**SOAH DOCKET NO. 453-05-0061.M5**

MDR Tracking Number: M5-04-2438-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 04-05-04.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The Level III office visits, , electrical muscle stimulation, ultrasound, massage therapy and neuromuscular re-education were found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable to date of service 02-11-04 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 6th day of August 2004.

Debra L. Hewitt  
Medical Dispute Resolution Officer  
Medical Review Division  
DLH/dlh

July 22, 2004

**Amended August 5, 2004**

David Martinez  
TWCC Medical Dispute Resolution  
4000 IH 35 South, MS 48  
Austin, TX 78704

Patient:

TWCC #:

MDR Tracking #:

M5-04-2438-01

IRO #:

5251

Ziroc has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to Ziroc for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

Ziroc has performed an independent review of the care rendered to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Doctor of Chiropractic. The reviewer is on the TWCC Approved Doctor List (ADL). The Ziroc health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to Ziroc for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

#### CLINICAL HISTORY

The patient was injured on her job at Wal-Mart when she was sorting merchandise from pallets and was reaching in an upward position to stack the objects. In doing so, she suffered an onset of pain in the low back which was diagnosed as a lumbar sprain strain. She began getting care from Dr. F 2 days after the injury. Care received included chiropractic manipulative therapy, active and passive modalities. Records indicate that the patient was responding quite well to the treatment rendered. A MRI of the lumbar spine was performed which indicated a subligamentous broad-based disc protrusion at the level of L4/L5. A peer review was performed by Dr. H in which he found the care unreasonable for the injury and was apparently disturbed by a lack of return-to-work by the patient. He stated that there was no endpoint to the chiropractic care and that the employer has an aggressive return-to-work program, but that the records did not acknowledge such a program. He declined further treatment for the patient.

## DISPUTED SERVICES

The carrier has denied the medical necessity of Level III office visits, electrical muscle stimulation, ultrasound, massage therapy and neuromuscular re-education for February 11, 2004.

## DECISION

The reviewer disagrees with the prior adverse determination.

## BASIS FOR THE DECISION

The care rendered on this case clearly was having a positive effect on this case. While the carrier's records indicate that it was diagnosed as a lumbar sprain/strain, the MRI indicated that a disc protrusion was present in the lumbar spine, which could complicate the issue and cause increased pain for a patient with such a condition. It must also be remembered that this case is one that had only been in the treating doctor's office for about 4 weeks from the date of injury. Even in the instance of a sprain/strain, we see evidence that it takes up to 8 weeks for tissue healing to complete. With the presence of a disc protrusion, one must be reasonable in the assessment of this case. True enough, the records of the treating doctor are a bit vague in places, however, the carrier's reviewer seemed to be more upset with the fact that the patient had not been returned to work than whether the care was reasonable. The Ziroc reviewer does agree that return to work issues are important, but the issue before the reviewer is whether the care was reasonable for a patient in this condition. The reviewer finds that indeed the care was reasonable and necessary for this case.

Ziroc has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Ziroc has made no determinations regarding benefits available under the injured employee's policy

As an officer of ZRC Services, Inc, dba Ziroc, I certify that there is no known conflict between the reviewer, Ziroc and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Ziroc is forwarding this finding by US Postal Service to the TWCC.

Sincerely,